within the proper time ought to be the sufferer, but that in other cases the objection of lateness ought not to be listened to, and any injury caused by the delay may be compensated for by the payment of costs. This I think a correct view." Their Lordships note that these observations were made in reference to a case where the application was to set aside a judgment by default which is on a different basis from an application to extend the time for appealing. In the one case the litigant has had no trial at all: in the other he has had a trial and lost. Their Lordships do not regard these observations as of general application.

Their Lordships are satisfied that to allow this appeal would be substantially to interfere with the practice of the Board in regard to applications of this nature. The Board is not familiar with the practice in local courts and their Lordships are most unwilling to interfere with the exercise of their discretion upon questions of procedure.

For these reasons their Lordships will report their opinion to the Head of Malaysia that the appeal should be dismissed and that the appellant should pay the costs.

Appeal dismissed.

Solicitors: *Parker Garrett & Co.; Slaughter & May.*

KOH PENG MOH v. YAHIYA

[O.C.J. (Winslow J.) November 24, 1964]

[Singapore — Suit No. 54 of 1964]

Contract — Sale of land — Exercise of option — Agreement subject to formal contract.

This was an action on an option to sell land subject to formal contract. The option was exercised but no contract or agreement for sale had been concluded as the buyer had been advised by his solicitors not to sign the agreement for sale tendered by the vendor until certain searches had been completed.

Held: the exercise of an option to sell land at a stipulated price within a prescribed time, subject to formal contract, cannot be regarded as a concluded contract giving rise to a remedy in damages for breach thereof, until a formal contract had in fact been concluded.

Cases referred to:—

(1) *Low Kar Yit & Ors.* v. *Mohamed Isa & Anor.* [1963] M.L.J. 165.

(2) *Luxor (Eastbourne) Ltd.* v. *Cooper* [1941] 1 All E.R. 33.

(3) *McCallum* v. *Hicks* [1950] 2 K.B. 271.

CIVIL SUIT.

R. E. Redrup for the plaintiff.

P. Selvadurai for the defendant.

Winslow J.: In my opinion the exercise of an option to sell land at a stipulated price within a prescribed time, subject to formal contract, cannot be regarded as a concluded contract giving rise to any remedy in damages for breach thereof, until a formal contract has in fact been concluded. This follows the line of reasoning adopted by Gill J. in *Low Kar Yit & Ors.* v. *Mohamed Isa & Anor.*[1] with which I agree entirely.

In this case, no contract or agreement for sale was concluded and the plaintiff acquired no vested right under any contract merely by finding a buyer who was ready, willing and able to purchase the land in question.

The buyer was advised by his solicitors not to sign the agreement for sale tendered by the vendor/defendant until certain searches had been completed. *Luxor (Eastbourne), Ltd.* v. *Cooper*[2] is authority for saying that there can be no implied term that the vendor will not refuse to go on with a proposed sale so long as matters are still in negotiation and no binding contract has been made, notwithstanding the fact that a willing and able purchaser has been introduced to the vendor by his agent. This principle was applied in the latter case of *McCallum* v. *Hicks*[3] where Denning L.J. held: "A person may not properly be said to be willing to purchase unless he has given irrevocable proof of his willingness by entering into a binding contract to purchase."

In the result it follows that the plaintiff in this action cannot succeed. The option, subject to formal contract, to sell the land was merely a conditional contract and on failure to comply with the condition vested no right in the plaintiff and no legally binding contract was thereby created.

Judgment will be entered for the defendant with costs.

Judgment for the defendant.

Solicitors: *Osborne-Jones & Redrup; Lee & Lee.*

NG ENG HIAM v. KOH GEOK NOI

[O.C.J. (Gill J.) November 25, 1964]

[K.L. — Civil Suit No. 96 of 1963]

Landlord and tenant — Recovery of possession — Death of tenant — Widow continuing in occupation — Notice to quit — Rent in arrears — Control of Rent Ordinance, 1956, s. 12.

This was an action for recovery of premises which were within the scope of the Control of Rent Ordinance, 1956. The tenant of the premises was one Poon Ting Yat and after his death his widow continued to occupy the premises. Notice to quit terminating the tenancy was sent addressed to Poon Ting Yat and this was